

House Study Bill 699 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
LABOR BILL BY CHAIRPERSON
OLSON)

A BILL FOR

1 An Act requiring that prevailing wage rates by locality be
2 paid to persons working on public improvements for public
3 bodies, unless by public resolution a political subdivision
4 of the state chooses not to utilize the prevailing wage rate
5 for a public improvement project, providing penalties, and
6 including effective date and applicability provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 84A.5, subsection 4, Code Supplement
2 2009, is amended to read as follows:

3 4. The division of labor services is responsible for the
4 administration of the laws of this state under chapters 88,
5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
6 and 94A, and section 85.68. The executive head of the division
7 is the labor commissioner, appointed pursuant to section 91.2.

8 Sec. 2. Section 91.4, Code 2009, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 11. To determine the prevailing wage rates
11 pursuant to chapter 91F.

12 Sec. 3. NEW SECTION. **91F.1 Short title.**

13 This chapter shall be known and may be cited as the "Public
14 Improvement Quality Protection and Safety Act".

15 Sec. 4. NEW SECTION. **91F.2 Public policy.**

16 It is in the public interest that public improvements
17 are completed by the best means and highest quality of labor
18 reasonably available, and that workers on public improvements
19 be compensated according to the real value of the services
20 they perform. It is the policy of this state that the wages
21 of workers on public improvements should be at least equal to
22 the prevailing wage rates paid for similar work by responsible
23 contractors in the community as a whole in order to accomplish
24 all of the following:

25 1. Protect workers and their contractors and subcontractors
26 from the effects of serious and unfair competition resulting
27 from wage levels detrimental to efficiency and well-being.

28 2. Ensure that contractors compete with one another on the
29 basis of the ability to perform work competently, efficiently,
30 and safely while maintaining community-established compensation
31 standards.

32 3. Recognize that local participation in public
33 improvements and local provision of wage income and benefits
34 are essential to the protection of community standards.

35 4. Encourage training and education of workers to industry

1 skill standards while requiring safety training.

2 5. Encourage contractors and subcontractors to use funds
3 allocated for employee fringe benefits for the actual purchase
4 of those benefits.

5 6. Recognize that political subdivisions, because of
6 circumstances unique to their communities at a given time, may
7 deem it beneficial to not require that prevailing wage rates be
8 paid on a particular public improvement project.

9 Sec. 5. NEW SECTION. 91F.3 Definitions.

10 As used in this chapter, unless the context otherwise
11 requires:

12 1. "*Commissioner*" means the labor commissioner appointed
13 pursuant to section 91.2 or the labor commissioner's designee.

14 2. "*Contractor*" or "*subcontractor*" means a person who
15 undertakes, offers to undertake, purports to have the capacity
16 to undertake, or submits a bid, individually or through others,
17 to engage in a public improvement.

18 3. "*Division*" means the division of labor of the department
19 of workforce development.

20 4. a. "*Fringe benefits*" means the following provision or
21 purchases of any of the benefits enumerated in paragraph "b".

22 (1) Contributions irrevocably made by a contractor or
23 subcontractor to a trustee or to a third person pursuant to a
24 plan, fund, or program.

25 (2) The costs to the contractor or subcontractor which are
26 reasonably related to providing benefits to workers pursuant
27 to an enforceable commitment to carry out a financially
28 responsible plan or program, given in writing to the workers
29 affected.

30 b. The following benefits are fringe benefits:

31 (1) Health insurance.

32 (2) Pension, retirement, or annuity benefits.

33 (3) Defraying costs of apprenticeship programs approved and
34 registered with the United States department of labor's office
35 of apprenticeship.

1 5. *"Horizontal and transportation infrastructure"* means
2 water treatment and filtration plants and stations, water
3 mains, storm water and sanitary sewers, sewage lagoons,
4 drainage projects, tile lines, locks, dams, levees, revetments,
5 river channels, retaining walls, shafts, tunnels, subways,
6 airport airfields, athletic fields, golf courses, bicycle and
7 pedestrian paths, sidewalks, fences, alleys, guard rails,
8 parking areas, right-of-way clearing, vertical infrastructure
9 site development, bridges, culverts, and roads and street
10 public improvement projects as defined in section 306.3.

11 6. *"Interested party"* means any of the following:

12 a. A contractor who submits a bid for the purpose of
13 securing the award of a contract for a public improvement.

14 b. A subcontractor of a contractor mentioned in a bid
15 referred to in paragraph "a".

16 c. A worker employed by a contractor or subcontractor
17 described in either paragraph "a" or "b".

18 d. A labor organization that represents workers engaged
19 in the same craft or classification as workers employed by a
20 contractor or subcontractor described in either paragraph "a"
21 or "b" and that exists, in whole or in part, for the purpose
22 of negotiating with employers concerning the wages, hours, or
23 terms and conditions of employment of employees.

24 e. A joint labor-management committee established pursuant
25 to the federal Labor Management Cooperation Act of 1978, 29
26 U.S.C. § 175a.

27 f. The division of labor of the department of workforce
28 development.

29 g. The department of transportation.

30 7. *"Locality"* means a county of this state and for
31 prevailing wage rate purposes is determined by the physical
32 location of the public improvement.

33 8. *"Maintenance work"* means the repair of existing public
34 improvements when the size, type, or extent of the public
35 improvement is not changed or increased.

1 9. "*Political subdivision*" means a county, city, or school
2 district.

3 10. "*Prevailing wage rate*" means the hourly wage rate plus
4 fringe benefit rate which the commissioner determines most
5 often occurs in accordance with this chapter.

6 11. "*Public body*" means the state or any of its political
7 subdivisions, the state board of regents, or a community
8 college.

9 12. *a.* "*Public improvement*" means construction, alteration,
10 reconstruction, repair, rehabilitation, refinishing,
11 refurbishing, remodeling, renovation, installation, or
12 demolition of horizontal and transportation infrastructure or
13 vertical infrastructure, where the estimated total cost of the
14 improvement is one hundred thousand dollars or more and where
15 such improvement meets any of the following requirements:

16 (1) Such improvement is undertaken and performed under the
17 supervision or direction of a public body.

18 (2) Such improvement is located on public property.

19 (3) Fifty-five percent or more of the horizontal and
20 transportation infrastructure or vertical infrastructure is
21 leased to a public body or is subject to a written agreement
22 to be leased by a public body, with vertical infrastructure
23 exceeding twenty thousand square feet.

24 *b.* "*Public improvement*" as defined in paragraph "*a*" includes
25 but is not limited to landscaping; site preparation; grading;
26 paving; excavation; overlay; moving; wrecking; painting;
27 decorating; fabrication of electrical, plumbing, heating,
28 cooling, ventilation, architectural systems, structural systems
29 or exhaust duct systems; mechanical installation; erection of
30 scaffolding; repair, assembly, or disassembly of equipment;
31 testing of materials; cleaning and hauling of refuse to an
32 outside disposal location; preparation and removal of roadway
33 construction zones, lane closures, flagging, and traffic
34 diversions; and the transportation of supplies, material, and
35 equipment to and from the site.

1 13. "*Vertical infrastructure*" means buildings, appurtenant
2 structures, underground storage tanks, and utilities.

3 14. "*Wage*" means the hourly rate of pay earned by an
4 employee and paid by an employer.

5 15. *a.* "*Worker*" means an individual who performs any
6 labor or service for a contractor or subcontractor on a
7 public improvement but does not include an individual when
8 transporting supplies, materials, or equipment for a seller,
9 supplier, manufacturer, or processor of materials or equipment.
10 *b.* The individual is deemed an employee of a contractor or
11 subcontractor unless an independent contractor relationship
12 between the individual and the contractor or subcontractor is
13 intended to be created and all of the following conditions
14 apply:

15 (1) The contractor or subcontractor does not control or
16 direct the performance of services by the individual.

17 (2) The contractor or subcontractor is not responsible for
18 the payment of the individual's wages.

19 (3) The contractor or subcontractor does not have the
20 right to discharge the individual or to terminate the working
21 relationship with the individual.

22 (4) The contractor or subcontractor is not the authority
23 in charge of the work or for whose benefit the individual is
24 providing services.

25 *c.* An individual classified as an employee under this
26 subsection shall also be classified as an employee pursuant to
27 chapters 85, 85A, 85B, 88, 91A, and 96.

28 Sec. 6. NEW SECTION. 91F.4 Determination of prevailing
29 wages.

30 1. The commissioner shall determine annually and publish
31 on the first business day of July, the prevailing wage rates
32 by locality for each craft, classification, or type of worker
33 needed to perform work on public improvements. The rates shall
34 be conclusive for one year from the date of publication unless
35 superseded within the one year by a later publication of the

1 commissioner, or for a longer period as provided in subsection
2 5.

3 2. The commissioner shall announce all prevailing wage rate
4 determinations by locality and give notice by posting them
5 on the portion of the department of workforce development's
6 internet site related to the division. A printed version of
7 the prevailing wage rates for the state shall be available to
8 the public upon request to the division.

9 3. The public body awarding any contract for a public
10 improvement or otherwise undertaking any public improvement,
11 shall obtain from the internet site the prevailing wage rate in
12 the locality in which the public improvement is to be performed
13 for each craft, classification, or type of worker needed
14 to perform work on the public improvement. After a public
15 improvement contract is awarded, or a public improvement is
16 otherwise undertaken, the prevailing wage rate published by the
17 commissioner and stated in the public body's public improvement
18 procurement documents shall remain in effect throughout the
19 duration of the public improvement unless superseded by a later
20 determination and publication by the commissioner, or unless
21 multiyear prevailing wage rates have been published by the
22 commissioner at the time the public improvement procurement
23 documents were released.

24 4. a. (1) Contractors who are registered with the division
25 pursuant to chapter 91C, who participate in an apprenticeship
26 program approved by and registered with the United States
27 department of labor's office of apprenticeship, and who provide
28 fringe benefits for their workers shall submit wage rates and
29 fringe benefits rates data once a year to the division. The
30 commissioner shall create an internet site and paper forms for
31 contractors to submit the required information.

32 (2) All parties shall keep the wage rates and fringe
33 benefits rates information confidential.

34 (3) An individual who intentionally provides misinformation
35 about wage rates, fringe benefits rates, or work locations

1 commits a violation under this chapter and shall be assessed
2 a one-hundred-dollar penalty per violation. A violation
3 under this subsection is grounds for a loss of licensure or
4 registration with the division, as applicable, which shall
5 be in addition to any penalty otherwise authorized by this
6 subsection.

7 *b.* The commissioner shall only accept and use wage rates and
8 fringe benefit rates data submitted by contractors that are in
9 compliance with this subsection.

10 *c.* The prevailing wage rates and fringe benefits rates
11 determined in each locality shall be set at the wage rate and
12 fringe benefits rate that thirty percent or more of those
13 employed in a particular craft, classification, or type of
14 work are paid in total. If a common wage rate and fringe
15 benefits rate is not paid to at least thirty percent of those
16 employed in a particular craft, classification, or type of
17 work, the total of the wage rates and fringe benefits rates
18 of all workers in a particular craft, classification, or type
19 of work shall be calculated and the average wage rate and
20 fringe benefits rate shall be the prevailing wage rate for that
21 particular craft, classification, or type of worker in that
22 locality, if not less than the federally established prevailing
23 wage rate for that locality. If less than the federally
24 established prevailing wage rate for that locality, the
25 commissioner may utilize the federally established prevailing
26 wage rates that apply to that locality.

27 5. Notwithstanding other provisions of this chapter to the
28 contrary, federal Davis-Bacon Act prevailing wage rates and
29 procedures, as defined in 29 C.F.R. pts. 1, 3, and 5, except
30 for 29 C.F.R. § 1.8 and 1.9, and administered by the public
31 body apply to public improvements that are publicly owned
32 horizontal and transportation infrastructure.

33 Sec. 7. NEW SECTION. 91F.5 Prevailing wage rate
34 determination — objections — appeals.

35 1. *a.* (1) Within fifteen days after the division has

1 published on the department of workforce development's internet
2 site the annual prevailing wage rates for each classification,
3 craft, or other type of worker in a locality, an interested
4 party may seek reconsideration of the determination or part of
5 the determination by filing a written objection, which shall
6 include a statement of the interested party's views and other
7 pertinent information, with the commissioner by restricted
8 certified mail as defined in section 618.15.

9 (2) Upon receipt of the written objections, the
10 commissioner shall respond by modifying or denying the
11 determination and providing a written reply by restricted
12 certified mail to the interested party within fifteen days from
13 the date of the receipt of the written objection.

14 (3) The commissioner shall publish a modification to the
15 determination within five business days of notification of the
16 interested party and the modification shall be effective upon
17 publication.

18 b. (1) Within ten days upon receiving receipt of the
19 commissioner's decision, the interested party may file a
20 written appeal to the department of inspections and appeals,
21 which shall set a hearing date before an administrative law
22 judge, who shall be an attorney.

23 (2) The department of inspections and appeals shall give
24 notice by restricted certified mail to the interested party and
25 the division at least ten days before the hearing date of the
26 time and place of the hearing.

27 (3) The hearing shall be held within thirty days after the
28 department of inspections and appeals receives the interested
29 party's written objection, and shall not be postponed or reset
30 for a later date except upon the consent, in writing, of both
31 the interested party and the division.

32 (4) The interested party objecting to the determination
33 set by the division shall have the burden of establishing that
34 the disputed determination was not determined in accordance
35 with this chapter. If the interested party objects to the

1 failure to include a particular craft, classification, or type
2 of worker within the annual prevailing wage rate determination
3 in a locality, the interested party must establish that the
4 particular craft, classification, or type of worker does not
5 exist under a different prevailing wage rate classification in
6 any of the localities under consideration.

7 (5) The administrative law judge may hear each objection
8 filed separately or, if applicable, consolidate two or
9 more objections about the same determination filed with the
10 department of inspections and appeals. The administrative law
11 judge shall render a final determination within twenty days
12 after the conclusion of the hearing.

13 2. An interested party may appeal the final determination
14 of the administrative law judge through judicial review as
15 provided under section 17A.19.

16 3. Notwithstanding section 17A.19, subsection 5, paragraph
17 "c", this section does not give reason or provide cause for an
18 injunction to halt or delay any public improvement.

19 Sec. 8. NEW SECTION. 91F.6 Payment of prevailing wage rates
20 required.

21 1. Contractors and subcontractors engaged in a public
22 improvement shall not pay less than the current specified
23 prevailing wage rates per pay period to all of their workers
24 engaged in the public improvement. However, this chapter does
25 not prohibit the payment of more than the prevailing wage rate
26 to any workers engaged in a public improvement.

27 2. All contractors and subcontractors required to pay the
28 prevailing wage rate under this chapter shall make payment,
29 without any deduction for food, sleeping accommodations,
30 transportation, use of tools or safety equipment, vehicle
31 or equipment rental, or any other thing of any kind or
32 description.

33 Sec. 9. NEW SECTION. 91F.7 Requirements for public
34 improvements.

35 1. The public body awarding a contract for a public

1 improvement or otherwise undertaking a public improvement shall
2 specify in the call for bids for the contract that this chapter
3 applies to the public improvement. All bid specifications
4 shall list the specified prevailing wage rates for all crafts,
5 classifications, or types of workers in the locality for each
6 worker needed to be included in the contract.

7 2. If a contract is let for a public improvement requiring
8 the payment of prevailing wage rates, the public body
9 awarding the contract shall cause to be inserted in the public
10 improvement specifications and contract a stipulation that
11 no less than the prevailing wage rates shall be paid to all
12 workers performing work under the contract. The contract
13 shall also contain a provision that if it is found that any
14 of the contractor's or subcontractor's workers engaged in the
15 public improvement have been paid at a wage rate less than the
16 prevailing wage rates required by this chapter, the public body
17 may terminate the contractor's or subcontractor's right to
18 proceed with the work and the contractor and its sureties shall
19 be liable to the public body for any excess costs occasioned by
20 the failure to pay the prevailing wage rates. If a subcontract
21 is let for a public improvement, the provisions of this
22 subsection apply to contracts with lower-tier subcontractors
23 and their workers.

24 3. A contractor and subcontractor engaging in a public
25 improvement shall submit a performance bond in an amount
26 determined by the public body and in which such bond shall
27 include a provision that will guarantee the payment of the
28 prevailing wage rates as required by the contract.

29 4. The public body awarding a contract for a public
30 improvement or otherwise undertaking a public improvement shall
31 notify the commissioner in writing, on a form prescribed by
32 the commissioner, if a contract subject to the provisions of
33 this chapter has been awarded. The public body shall file the
34 notification with the commissioner within thirty days after
35 the contract is awarded or before commencement of the public

1 improvement, whichever is sooner, and shall include a list of
2 all first-tier subcontractors.

3 5. All workers who perform any labor or service for a
4 contractor or subcontractor on a public improvement must
5 complete prior to commencing work on the public improvement a
6 minimum ten-hour construction safety program approved by the
7 United States occupational safety and health administration.

8 6. A political subdivision may choose by adopting a
9 resolution, after providing public notice of the proposed
10 resolution and prior to the letting of a public improvement for
11 bids, not to require prevailing wage rates to be paid for the
12 particular public improvement.

13 Sec. 10. NEW SECTION. **91F.8 Federal public improvements**
14 **— not applicable.**

15 The provisions of this chapter shall not be applicable to
16 public improvements financed entirely by federal funds which
17 require a pay or wage rate determination by the United States
18 department of labor. If a public improvement is financed in
19 part by a public body and in part by federal funds, the higher
20 of the pay or wage rates shall be utilized for the public
21 improvement.

22 Sec. 11. NEW SECTION. **91F.9 Records required.**

23 While participating in a public improvement, the contractor
24 and each subcontractor shall do all of the following:

25 1. Make and keep, for a period of not less than three years,
26 accurate records of all workers employed by the contractor or
27 subcontractor on the public improvement. The records shall
28 include each worker's name, address, telephone number when
29 available, social security number, trade classification, the
30 hourly wages paid in each pay period, the number of hours
31 worked each day, and the starting and ending times of work each
32 day.

33 2. Submit monthly certified payroll records to the public
34 body responsible for the public improvement. The employer
35 shall retain such records for three years.

1 3. Post the prevailing wage rates for each craft,
2 classification, or type of workers involved in the public
3 improvement in a prominent and easily accessible place at the
4 site of the public improvement or at the place or places used
5 by the contractor or subcontractor to pay workers their wages.

6 Sec. 12. NEW SECTION. **91F.10 Powers of commissioner.**

7 1. The commissioner and the division shall administer this
8 chapter in accordance with chapter 17A, and the commissioner
9 shall adopt rules for the administration and enforcement of
10 this chapter as provided in section 91.6.

11 2. The commissioner shall enforce the provisions of this
12 chapter. The commissioner may hold hearings and investigate
13 charges of violations of this chapter.

14 3. The commissioner may, consistent with due process of law,
15 enter any place of employment to inspect records concerning
16 wages and payrolls, to question the employer and employees, and
17 to investigate such facts, conditions, or matters as are deemed
18 appropriate in determining whether any person has violated
19 the provisions of this chapter. However, such entry by the
20 commissioner shall only be in response to a written complaint.

21 4. The commissioner shall develop a written complaint form
22 applicable for this chapter and make it available in division
23 offices and on the department of workforce development's
24 internet site.

25 5. The commissioner may sue for injunctive relief against
26 the awarding of a contract, the undertaking of a public
27 improvement, or the continuation of a public improvement when
28 the prevailing wage rate requirements of this chapter have not
29 been met.

30 6. The commissioner may investigate and ascertain the wages
31 of workers engaged in any public improvement in this state.

32 7. The commissioner may administer oaths, take or cause to
33 be taken depositions of witnesses, and require by subpoena the
34 attendance and testimony of witnesses and the production of all
35 books, registers, payrolls, and other evidence relative to the

1 matter under investigation or hearing.

2 8. The commissioner may employ such qualified personnel
3 as are necessary for the enforcement of this chapter. Such
4 personnel shall be employed pursuant to chapter 8A, subchapter
5 IV.

6 9. The commissioner shall require a contractor or
7 subcontractor to file, within ten days of receipt of a request,
8 any records enumerated in section 91F.9. If the contractor or
9 subcontractor fails to provide the requested records within ten
10 days, the commission may direct, within fifteen days after the
11 end of the ten-day period, that the fiscal or financial officer
12 charged with the custody and disbursements of the funds of the
13 public body, which contracted for construction of the public
14 improvement or undertook the public improvement, to immediately
15 withhold from payment to the contractor or subcontractor
16 up to twenty-five percent of the amount to be paid to the
17 contractor or subcontractor under the terms of the contract
18 or written instrument under which the public improvement is
19 being performed. The amount withheld shall be immediately
20 released upon receipt by the public body of a notice from
21 the commissioner indicating that the request for records as
22 required by this section has been satisfied.

23 Sec. 13. NEW SECTION. 91F.11 **Notice of violations.**

24 1. For purposes of this section:

25 a. "*Accurate records*" means the hourly rate of contribution
26 and costs paid for fringe benefits and whether the
27 contributions and costs of the fringe benefits were paid into a
28 fund or paid directly to the worker.

29 b. "*Decision*" means a determination by the division that a
30 single violation of this chapter has occurred, warranting the
31 commissioner to issue a notice of violation to a contractor or
32 subcontractor.

33 c. "*Notice of second violation*" is a formal written notice
34 issued by the division advising a contractor or subcontractor
35 that a second or subsequent violation has occurred within three

1 years from the date of the notice of a first violation.

2 *d. "Notice of violation"* means a formal written notice
3 issued by the division to a contractor or subcontractor
4 that the division has made a decision that the contractor or
5 subcontractor has violated this chapter.

6 *e. "Violation"* means a written decision by the division that
7 a contractor or subcontractor has done one of the following:

8 (1) Failed or refused to pay the prevailing wage rates to
9 one or more workers as required by this chapter.

10 (2) Failed to keep accurate records as required by this
11 chapter.

12 (3) Failed to produce for the division accurate records or
13 produced records not in compliance with this chapter.

14 (4) Refused to submit records or testimony to the division
15 in response to a subpoena issued in accordance with this
16 chapter.

17 (5) Refused the division access, at any reasonable hour at
18 a location within the state, to inspect the contractor's or
19 subcontractor's records as required by this chapter.

20 (6) Failed to insert into a contract, a written stipulation
21 that not less than the prevailing wage rates be paid as
22 required by this chapter.

23 (7) Failed to obtain a bond in the proper amount that
24 guarantees the payment of the prevailing wage rates required in
25 the contract.

26 (8) Failed to post the prevailing wage rates as required by
27 this chapter.

28 (9) Failed to submit or retain certified payroll records.

29 2. After receipt of a written complaint by an interested
30 party or on the division's initiative, the commissioner shall
31 review the investigative file to determine whether a violation
32 has occurred for which the contractor or subcontractor must
33 be given notice. All information gathered during an audit or
34 investigation shall be considered and shall constitute the
35 basis for the division's decision that this chapter has been

1 violated and that a notice of violation is required to be
2 issued. The notice of violation shall identify the specific
3 violation and the amount of moneys estimated due the interested
4 party and in controversy based on reasons contained in the
5 investigative file.

6 3. In making a decision that a contractor or subcontractor
7 has failed to allow the commissioner access to accurate
8 records, the commissioner shall rely on the information
9 contained in the investigative file, and shall assess a
10 separate violation for each day worked by each worker on the
11 public improvement. Each decision of a separate violation
12 shall be listed in the notice of violation.

13 4. In determining that this chapter has been violated and
14 that the issuance of a notice of violation is required, the
15 commissioner shall base the decision on one or any combination
16 of the following reasons:

17 a. The severity of the violations, which includes the
18 following:

19 (1) The amount of wages that are determined to be underpaid
20 pursuant to this chapter.

21 (2) The activity or conduct complained of that violates the
22 requirements of this chapter and was not merely a technical,
23 nonsubstantive error. Examples of a technical, nonsubstantive
24 error include but are not limited to a mathematical error,
25 bookkeeping error, transposition of numbers, or computer or
26 programming error.

27 b. The nature and duration of the present violation and the
28 prior history of the contractor or subcontractor related to
29 this history. The prior history considered shall not exceed
30 seven years before the date of the notice of violation.

31 c. Whether the contractor or subcontractor has kept payroll
32 records and accurate records for three years and whether
33 the contractor or subcontractor produced payroll records in
34 accordance with section 91F.9.

35 d. Whether the contractor or subcontractor has violated any

1 other provision of this chapter.

2 5. The notices of the first, second, and subsequent
3 violations shall be sent by restricted certified mail,
4 addressed to the last known address of the contractor or
5 subcontractor involved. The notices shall contain a reference
6 to the specific provisions of this chapter alleged to have been
7 violated, identify the particular public improvement involved,
8 identify the conduct complained of, and identify whether the
9 notice is a first, second, or subsequent notice, and include a
10 contractor's or subcontractor's statement of liabilities.

11 Sec. 14. NEW SECTION. 91F.12 Violations — remedies.

12 1. If the commission determines that a public body has
13 divided a public improvement into more than one contract for
14 the purpose of avoiding compliance with this chapter, the
15 commissioner shall issue an order compelling compliance. In
16 making a determination whether a public body has divided a
17 public improvement into more than one contract for the purpose
18 of avoiding compliance with this chapter, the commissioner
19 shall consider all of the following:

20 a. The physical separation of the public improvement
21 structures.

22 b. The timing of the work on the public improvement phases
23 or structures.

24 c. The continuity of public improvement contractors and
25 subcontractors working on public improvement parts or phases.

26 d. The manner in which the public body and the contractor
27 and subcontractors administer and implement work on the public
28 improvement.

29 2. A worker employed by the contractor and subcontractor
30 who is paid less than the specified prevailing wage rates
31 under this chapter shall have a private right of action for
32 the difference between the amount so paid and the specified
33 prevailing wage rates, and punitive damages, if appropriate,
34 together with costs and reasonable attorney fees as shall be
35 allowed by the court, and the contractor or subcontractor shall

1 additionally be liable to the division for fifty percent of the
2 underpayments.

3 3. If a second or subsequent action to recover underpayments
4 is brought against a contractor or subcontractor within a
5 three-year period and the contractor or subcontractor is
6 found liable for underpayments to a worker, the contractor or
7 subcontractor shall be liable to the division for seventy-five
8 percent of the underpayments payable as a result of the second
9 or subsequent action. The three-year period begins to run from
10 the date the contractor or subcontractor is determined liable
11 for the first violation.

12 4. The commissioner and any interested party shall also
13 have a right of action on behalf of a worker who has a right
14 of action under this chapter. An action brought to recover
15 the same shall be deemed to be a suit for wages, and all
16 judgments entered in the action shall have the same force and
17 effect as other judgments for wages. At the request of a
18 worker employed by a contractor or subcontractor who is paid
19 less than the prevailing wage rates required by this chapter,
20 the commissioner may take an assignment of the wage claim
21 in trust for the assigning worker and may bring any legal
22 action necessary to collect the claim, and the contractor or
23 subcontractor shall be required to pay the expenses of the
24 division incurred in collecting the claim.

25 5. a. It is a violation of this chapter for a contractor or
26 subcontractor to do any of the following:

27 (1) To request or demand, either before or after the worker
28 is engaged, that a worker pay back, return, donate, contribute,
29 or give any part or all of the worker's pay, salary, or thing of
30 value, to any person, upon the statement, representation, or
31 understanding that failure to comply with the request or demand
32 will prevent the worker from procuring or retaining employment.

33 (2) To directly or indirectly pay, request, or authorize any
34 other person to violate this chapter.

35 b. This subsection does not apply to an agent or

1 representative of a duly constituted labor organization acting
2 in the collection of dues or assessments from the members of
3 the organization.

4 6. In addition to other penalties provided under this
5 chapter, whoever induces a worker working on a public
6 improvement subject to this chapter to give up or forego
7 any part of the prevailing wage rates to which the worker
8 is entitled under this chapter by threat not to employ or
9 by threat of dismissal from employment commits a serious
10 misdemeanor. An agreement between the worker and the
11 contractor or subcontractor to work for less than the specified
12 prevailing wage rates shall not be a defense to criminal
13 prosecution.

14 7. A contract shall not be awarded for a period of up
15 to three years to a contractor or subcontractor who, on
16 two separate occasions within a three-year period, has been
17 determined by the commissioner to have violated this chapter.

18 8. If the division determines that a contractor or
19 subcontractor has violated this chapter on two separate
20 occasions within a three-year period, the division shall list
21 on the department of workforce development's internet site and
22 keep on record the name of the contractor or subcontractor and
23 give notice by restricted certified mail of the list to any
24 public body requesting the list.

25 9. Upon a determination that a contractor or subcontractor
26 may have violated this chapter on two separate occasions within
27 a three-year period, the division shall notify the violating
28 contractor or subcontractor by restricted certified mail.

29 a. The contractor or subcontractor has thirty working days
30 to request of the division a hearing before an administrative
31 law judge on the alleged violation. Failure to respond within
32 thirty working days shall result in an immediate and indefinite
33 barring of the violator from work on public improvements
34 and placement and publication of the violator's name on the
35 department of workforce development's internet site.

1 *b.* If the contractor or subcontractor requests a hearing
2 within thirty working days by restricted certified mail, the
3 department of inspections and appeals shall set a hearing
4 before an administrative law judge on the alleged violation to
5 determine the length of the contractor's or subcontractor's
6 bar, if any, not to exceed three years. The hearing shall take
7 place no later than thirty calendar days after the receipt by
8 the division of the request for a hearing. An action by an
9 administrative law judge constitutes final agency action and is
10 subject to judicial review under section 17A.19.

11 10. This section does not give reason or provide cause for
12 an injunction to halt or delay any public improvement. Any
13 penalties recovered pursuant to this chapter shall be deposited
14 in the general fund of the state.

15 Sec. 15. NEW SECTION. 91F.13 **Apprentices.**

16 This chapter shall not prevent the employment of apprentices
17 on public improvements. However, an apprentice employed
18 on a public improvement must be registered with the United
19 States department of labor's office of apprenticeship under
20 an apprenticeship program registered with that office, paid
21 the proper wages specified in the standards of apprenticeship,
22 and engaged only in the trade to which the apprentice is
23 registered. If the apprentice is employed on a public
24 improvement in a trade to which the apprentice is not
25 registered with the United States department of labor's office
26 of apprenticeship, the apprentice shall be treated as any other
27 worker under this chapter.

28 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
29 3, shall not apply to this Act.

30 Sec. 17. EMERGENCY RULES. The commissioner may adopt
31 emergency rules under section 17A.4, subsection 3, and section
32 17A.5, subsection 2, paragraph "b", to implement the provisions
33 of this Act and the rules shall be effective immediately upon
34 filing unless a later date is specified in the rules. Any
35 rules adopted in accordance with this section shall also be

1 published as a notice of intended action as provided in section
2 17A.4.

3 Sec. 18. TEMPORARY WAGE RATE DETERMINATIONS —
4 APPLICABILITY. Until such time after the first annual review
5 of data required pursuant to this Act is completed, the
6 commissioner may utilize the wage rates and fringe benefits
7 rates as set by the federal Davis-Bacon Act, 40 U.S.C. § 3141,
8 et seq.

9 Sec. 19. EFFECTIVE UPON ENACTMENT. This Act, being deemed
10 of immediate importance, takes effect upon enactment.

11 EXPLANATION

12 This bill creates the "Public Improvement Quality Protection
13 and Safety Act".

14 A contractor is required to pay workers the same hourly
15 wage plus fringe benefits for certain public improvements as
16 the contractor would pay workers for a private construction
17 or improvement project. The bill provides that the per-hour
18 wage rate be based on what is normally paid in the area by
19 contractors for similar projects, and to be adjusted on a
20 yearly basis by the department of workforce development. The
21 bill includes specific criteria, such as cost of the public
22 improvement, for the project to qualify for the prevailing wage
23 rate.

24 The wage rates that the workers must be paid shall also
25 include fringe benefits such as health insurance, life
26 insurance, sick leave, and vacation and holiday pay. The bill
27 applies to any public improvement that receives money from a
28 public body and includes most types of public improvements from
29 construction to painting to hauling.

30 According to Code section 91F.4, the labor commissioner
31 determines the wage rates for specific localities and for
32 specific crafts, classifications, and types of workers. This
33 information must be posted on the department of workforce
34 development's internet site.

35 As presented in Code section 91F.5, an interested party

1 affected by the wage rates has 15 days after the department of
2 workforce development has posted the wage rates on its internet
3 site to object in writing, stating the specific reason for the
4 objection, to the labor commissioner. The commissioner must
5 respond and either affirm or modify the determination within 15
6 days of receiving the objection. The commissioner must publish
7 any modification within five days.

8 Within 10 days of the commissioner's decision, the
9 interested party may submit an objection in writing to the
10 department of inspections and appeals. A hearing must be set
11 by the department before an administrative law judge within
12 30 days after the objection is filed. The administrative law
13 judge must make a decision about the wage rate within 20 days
14 and it is considered a final determination. The decision may
15 be appealed through judicial review under Code section 17A.19.

16 The bill provides in Code section 91F.6 that contractors
17 and subcontractors must not pay the workers less than the
18 established wage rate but does not prohibit them from paying
19 the workers more than the wage rate. The wage rate must be
20 paid without any deductions for food, sleeping quarters, use
21 of tools, or safety equipment.

22 The bill lists the requirements for public improvements
23 in Code section 91F.7, which include the requirement that a
24 public body monitor the contractors and subcontractors to
25 ensure that the wage rate is paid. A call for bids must state
26 that the wage rate must be included in the bids for the public
27 improvement. All bids shall list the specific wage rates for
28 each craft, classification, and type of worker needed for the
29 public improvement. All contractors and subcontractors are
30 required to sign a contract that states they will pay workers
31 the wage rate determined by the division. All workers who
32 will perform on a public improvement must complete at least a
33 10-hour federal occupational safety and health administration
34 approved safety program before the public improvement begins.
35 If the contractors and subcontractors are found to not be

1 paying the wage rate, the contractor's or subcontractor's right
2 to work on the public improvement and get paid for work already
3 done may be terminated. A political subdivision may choose to
4 not require prevailing wage rates for a public improvement by
5 adopting a resolution. The public must be given prior notice
6 of the proposed resolution prior to the letting of bids.

7 According to Code section 91F.8, the bill does not apply
8 to public improvement funded by the federal government. If a
9 public improvement is financed by both a state public body and
10 the federal government, then the higher of the applicable wage
11 rates shall be paid to the workers.

12 Contractors and subcontractors are required to keep detailed
13 records for at least three years about the workers, the rates
14 paid, and the hours worked for each public improvement pursuant
15 to Code section 91F.9. Contractors and subcontractors must
16 also post the wage rates for each craft, classification, and
17 type of worker in a public place where workers can see the
18 posting or at the place where they receive their wages.

19 The commissioner is given specific powers in Code section
20 91F.10 for administration, investigation, enforcement,
21 and penalization; including the power to sue to prevent a
22 contractor or subcontractor from being awarded a contract
23 for a public improvement when the wage rate requirements
24 have not been met or to withhold payments if a contractor or
25 subcontractor does not produce records upon request.

26 After receiving a written complaint, the commissioner shall
27 investigate whether there has been a violation pursuant to
28 Code section 91F.11. If the commissioner determines there
29 has been a violation, the contractor or subcontractor must be
30 given notice of that violation. The notice is a formal written
31 statement from the department of workforce development that
32 states the specific violation and the amount of money due as
33 a penalty.

34 Code section 91F.12 contains the violations and penalties
35 for public bodies that divide a public improvement to avoid

1 paying the prevailing wage rates. The Code section also
2 covers the penalties for contractors who fail to pay workers
3 the prevailing wage rates and the remedies for workers.
4 The process of notice and penalties for first, second, and
5 subsequent violations by contractors are described as well.
6 In addition to other penalties under this law, anyone who
7 attempts to get a worker to give up any part of compensation
8 on a public improvement by threat not to hire or by threat of
9 firing commits a serious misdemeanor. A serious misdemeanor
10 is punishable by confinement for no more than one year and a
11 fine of at least \$315 but not more than \$1,875. Any agreement
12 to work for less than the determined wage rate is not a defense
13 to criminal prosecution.

14 In Code section 91F.13, apprentices employed on a
15 public improvement must be registered with the office of
16 apprenticeship in the United States department of labor.
17 Apprentices must receive the wages set out in the standards of
18 apprenticeship and do only the work specified in the trade to
19 which they are apprenticed. An apprentice not registered with
20 the federal program shall be paid the wage rate the same as any
21 other worker.

22 The bill may include a state mandate as defined in Code
23 section 25B.3. The bill makes inapplicable Code section 25B.2,
24 subsection 3, which would relieve a political subdivision from
25 complying with a state mandate if funding for the cost of
26 the state mandate is not provided or specified. Therefore,
27 political subdivisions are required to comply with any state
28 mandate included in the bill.

29 The commissioner may adopt emergency rules to implement
30 the provisions of this bill and the rules will be effective
31 immediately upon filing unless a later date is specified.

32 The commissioner may use the wage rates and fringe benefits
33 rates as set by the federal Davis-Bacon Act until such time as
34 the commissioner is able to determine wage rates and fringe
35 benefits rates for the localities in the bill.

H.F. _____

1 The bill takes effect upon enactment.